EXHIBIT AH

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff-Applicant,

-vs- 08-01789 (SMB)

BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

Defendant.

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In re:

BERNARD L. MADOFF,

Debtor.

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VIDEOTAPED DEPOSITION
OF
BERNARD L. MADOFF
(Taken by the Customers)
Butner, North Carolina
December 20, 2016

Reported by: Lisa A. DeGroat, RPR
Notary Public

A P P E A R A N C E S

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The Videographer:
Robert Collier

VIDEOTAPED DEPOSITION OF BERNARD L. MADOFF, taken by the Customers, at the Federal Correctional Institution, Butner Medium I, Old NC Highway 75, Butner, North Carolina, on the 20th day of December, 2016, at 8:52 a.m., before Lisa A. DeGroat, Registered Professional Reporter and Notary Public.

C O N T E N T S

I N D E X O F T H E E X H I B I T S

your apartment; is that right?
A. Yes.
Q. And is it fair to say that you had a lot of time to think about what you had done?
A. Yes.
Q. When you spoke to Judge Chin on March 12th, 2009, did you tell the truth about what you had done?
A. Yes.
Q. I want to read, beginning on line 12 of page 25, the -- the one paragraph. Quote, "To the best of my recollection, my fraud began in the early 1990s. At that time the country was in a recession, and this posed a problem for investments in the securities markets."
"Nevertheless, I had received investment commitments from certain institutional clients and understood that those clients, like all professional investors, expected to see their investments outperform the market."
"While I never promised a specific rate of return to my client, I felt compelled to satisfy my clients' expectations at any cost. I, therefore, claimed that I employed an investment strategy I had developed called the split-strike conversion strategy to falsely give the appearance to clients that I had

achieved the results I believed they expected."
Is that statement 100 percent true?
A. Yes. However, there's -- if I understand this statement, it said that -- that -- "to falsely give the appearance," implies that I had achieved the results. When I took the money and I started the strategy, the strategy -- there was nothing in the strategy to give a false impression.
In other words, I was the -- you know, I intended to invest the money. The fact that I invested -- that I couldn't invest it because of market conditions, but then shorted the strategy to the clients, then it was -- it -- it gave the false impression, but that -- it was not my intention when I first developed the strategy or made the commitments to the clients to -- to not invest the money at that time.
Q. Okay. So, if I understand you correctly, when you developed the split-strike conversion strategy, your intention was to carry it out --
A. Correct.
Q. -- honestly?
A. Correct.
Q. But you didn't have the money to do that, and so you --

A. I didn't have the market conditions to do that.
Q. Okay. So you started sending statements to clients which were not accurate, because they reflected purchases of securities that did not occur?
A. Yes. That's correct.
Q. Okay. Now, you understood that this was a fraud on your customers; right?
A. Yes.
Q. And is it your testimony that you never perpetrated a fraud on your customers prior to the initiation of the split-strike conversion strategy?
A. That's correct.
MR. SHEEHAN: Object -- object to the form.
THE WITNESS: I'm sorry. I didn't hear what you just --
MR. SHEEHAN: I said I objected to the form.
THE WITNESS: Oh.
MR. SHEEHAN: We have an understanding that all objections are preserved, as subject to objections as to form.
MS. CHAITMAN: Right, but what is your objection to that form? I just want to --

said, "Most of the time the clients' money just simply went into a bank account in New York that Bernie Madoff controlled. Between the early '90s and December 2008, at Bernie Madoff's direction, and together with others, I did the following things."

"On a regular basis I told clients over the phones and using wires that transactions on national securities exchanges were taking place in their account when I knew that no such transactions were indeed taking place."

"I also took steps to conceal from clients, from the SEC and from auditors the fact that no actual security trades were taking place and to perpetuate the illusion that they actually were."

Now, Mr. DiPascali in one place -- in two places he said it was the early '90s, and in one place he said it was the late '80s or early '90s.

When to the best of your recollection did Mr. DiPascali become involved in dealing with investment advisory customers?

A. Well, he -- he knew that I was doing customer business, you know, you know, in the '80s. Primarily the -- what I was just talking about with some large clients and also the convertible arbitrage clients, he was aware -- he was aware of that

business.
He was also aware that what happened in '87 and -- and during the crash that, you know, there was some -- there was some -- there was some clients that were wanting to sell out of their positions that they had had because of their concern about the market.
And that I had, you know, objected to that, telling them that this was in violation of their commitments that they had made originally. So he was aware of the fact that those discussions were taking place.
And he was also aware of the fact that I was doing -- actually doing the convertible arbitrage transactions prior to that.
Q. Okay. But in terms of the -- the crime that he's admitting to here --
A. Right.
Q. -- can you shed any light on whether, in fact, this began in the late '80s or the early '90s?
A. Oh, it -- it began, as I said, in the '90s.
Q. Okay. All right. And when you say in the '90s, are you fairly certain it was 1992?
A. That was -- yes. That was the date -- the approximate date that I said it started, because that's when I really started to take in the money to

do the split-strike trades.
Q. Okay. All right. Now I'd like to go to --
MS. CHAITMAN: You-all have Mr. DiPascali's transcript?
MR. SHEEHAN: Mr. Kugel's.
MS. CHAITMAN: I'm sorry. Mr. Kugel's transcript?
MR. SHEEHAN: Yup.
THE WITNESS: Uh-huh.
MS. CHAITMAN: Okay. Can I just have Kugel's transcript for a second?
BY MS. CHAITMAN:
Q. All right. So I've marked this as Exhibit 3. Now, if you'd be good enough to look at page 32. I'm going to read, beginning on line four. This is Mr. Kugel's plea, and he gave this plea on November 21st, 2011.
"Specifically beginning" -- it should be -- "in the early '70s until the collapse of BLMIS in December of 2008 I helped create fake backdated trades."
"I provided historical trade information -- sorry -- first to Annette Bongiorno and later to Joann Crupi and others, which enabled them to create fake trades that when included on the account statements

A. The past four chairmen of the SEC have all been up in my office, watching us trade and meeting with us, as well as all of these foreign exchanges.

As a matter of fact, the -- the NASD used our -- during the 9/11 crisis the SEC and the NASD asked us, would we allow the NASD to -- to operate their backer facility out of our backer facility that we had in Queens, because that's the -- everybody was having problems because of the -- you know, the -- the bombing out of the -- the plane crashing into the buildings.

So the NASD for a period of, I guess it was, three months used our facilities to back up their trades, and also their compliance people sat in my office for a period of months, operating, you know, because they didn't have -- their offices were destroyed.

Q. Now, Mr. Madoff, I think you know that the trustee has taken the position in court he has not conceded that you ever did any legitimate trading. Can you explain to us -- starting in 1960 and then ending on December 11th, 2008 can you explain to us the volume of trading that you did in various periods of time and the number of employees whose job was to conduct real trades?

A. Well, when I started my firm in 1960, it was basically myself. And I operated at that time out of my father-in-law's accounting office, because I was in law school at the time. So in those days it was very common for small brokerage firms to operate.

As a matter of fact, I started with $500 of capital. And that was a small amount even by the SEC's standard during that time. So I was required to meet with the New York office of the SEC to explain how I basically had the nerve to present a handwritten balance sheet with $500 cash assets and no liabilities.

And, you know, so they wanted to make sure that I was real. And I started with the $500 of -- of capital, which in those days didn't require much, because I was -- my plan was just to do a small retail business basically with my family as clients.

That, you know, eventually grew from a one-man operation to, I guess, you know, 200 some odd people here and in -- in London in 2008.

I started this small retail firm. Relatively unsuccessful the first couple of years, because I ran into the Cuban missile crisis, and the marketplace collapsed in 2000 -- in 1962.

Required me to borrow $30,000 from my

father-in-law in the form of -- of municipal bonds to recapitalize my firm, which I paid back, you know, a year or so later.

And then gradually just -- and then became a market-making firm in the '70s, early '70, and became a market-making firm for the rest of the balance of my 50 years in the business.

At one -- we -- at the -- by the time we were finished in 2008 the firm was operating -- was executing a few 100,000 trades, up to 600,000 trades a day at the high, but we were averaging about 300,000 transactions a day, and we represented ten percent of the United States' volume in -- in transactions.

Q. Now, we're talking about legitimate transactions?

A. All market-making were legitimate transactions. The -- and the firm was operating basically as -- primarily most of the time as a market-making and proprietary trading firm.

It was -- the investment advisory firm really came into -- you know, into being on a gradual basis, and then was my undoing basically in the early '90s, because of a problem that occurred originally in '80 -- as I say, the crash in '87, but perpetuated a fraud that started, as I said, in the '90s, which was,

THE WITNESS: I -- I can -- I can put people to sleep. The chairman of the London Stock Exchange fell asleep during one of my meetings with him, but he said it was jet lag. You don't have jet lag. So --

MR. SHEEHAN: I have no jet lag.

BY MS. CHAITMAN:

Q. Mr. Madoff, I had sent you in advance of the deposition a copy of Mr. Dubinsky's report. Have you had a chance to review it?

A. Yes, I have.

Q. Okay. And did you agree with his conclusions?

A. Some of them.

Q. Okay. Did you agree with all of them?

A. No.

Q. Okay. Did you find that overall there were some mistakes that Mr. Dubinsky made?

MR. SHEEHAN: Objection as to the form.

THE WITNESS: Yes.

BY MS. CHAITMAN:

Q. Okay. Before we go into detail with respect to the report can you tell me some of the mistakes that you found with Mr. Dubinsky's approach?

A. Well, first of all, the majority of the

report had to deal with the split-strike conversion trades, which I was sort of at a loss for -- and this report, from what I understand from -- cost a lot of money to -- to produce.

And I had from day one acknowledged that there was no split-strike trades being done and that there was a fraud. So I couldn't understand why so much money was --

Look, let me just say that from the time that I plead guilty for this -- for this fraud, I've had to live with the guilt of -- of knowing what I did.

All right. And my decision basically to -- to plead guilty and to not go to trial was to be able to recover as much money as possible to my -- for my clients.

And the -- you know, rather than go to -- to trial, which I knew that I was guilty of, and put my family through a -- the horror of, you know, what would -- what would occur with the trial, I -- I decided that the best thing that I could do would be to plead guilty, take my sentence and do everything that I could to recover the money for the clients, who I defrauded.

Q. Let me just interrupt you there.

And if I go to these people and -- which I've already done to a certain extent anyhow -- and threaten them with -- you know, with their complicity, I said, I'll get the money back. Now, nobody believed that I could possibly do this.

MS. CHAITMAN: We're just running out of the tape. So we have to --

THE WITNESS: Okay.

MS. CHAITMAN: -- take a break.

THE VIDEOGRAPHER: Okay. This ends media number one in the deposition of Bernie L. -- Bernard L. Madoff. Going off the record. The time is 11:12.

(RECESS FROM 11:12 A.M. TO 11:27 P.M.)

THE VIDEOGRAPHER: Back on the record. This begins media number two in the deposition of Bernard L. Madoff. The time is 11:27.

BY MS. CHAITMAN:

Q. Mr. Madoff, we've been --

A. Okay. I --

Q. -- discussing a few other things, but I want to come back, if I may, to the Dubinsky report.

A. Right.

Q. And my question is: Are there some fundamental errors that you feel Mr. Dubinsky made?

A. Yes.

Q. Okay. Let's -- let's go through them one at a time.

A. Okay. All right. Basically what -- well, I'd like to say is that I would -- I'm not going to get involved in his -- the majority of the report that deals with the split-strike conversion trades or whether or not the trades were executed or not, because the -- I have no objection to -- I can't find fault with what he -- what his determination was, because I was not executing the trades.

So there's no point in me, you know, evaluating what he says was right or wrong. There may be errors in there, but it doesn't matter. The fact was the errors that I found were -- had to deal with the beginning of the report dealing with the convertible -- the trading that took place before 1992, which basically involved the convertible bond arbitrage transactions.

So, first of all, let me start by saying that it was quite -- I understand that his -- from his CV that he has a very good CV. All right. In other words, he seems to be -- have his references of fraud reporting or -- I don't find any fault with that. He seems to have a lot of experience.

That being said, it became very obvious to me that his knowledge of the market-making and the dealer markets and the over-the-counter trading, whether it be convertibles or so on, there -- he had very little experience in that.

And that's not a great surprise to me, because it's sort of a specialized marketplace. And unless, you know, you -- you have firsthand experience of how market-makers operate, how the dealer market works and how the trading of convertible bonds takes place, you know, that's a specialized kind of marketplace.

And he had things that were really wrong. For example, he makes the statement that Madoff sent a confirmation to a client, where he -- you know, the client -- he says that the client bought stock or sold stock, which was opposite of what happened.

In other words, typically when a retail client gets a confirmation from Merrill Lynch, for example, it states the client bought IBM at a price or sold IBM at a price.

When a dealer sends a confirmation to a client, it says, we bought, we sold. Meaning the dealer bought or sold to the client. So, for example, there's a confirmation, and I have a -- a copy of one

of our confirmations.

Well, I don't need that. In other words, our confirmation says we bought. That means Madoff bought for the customer or from the customer or sold to the customer.

Q. Okay. You know what? I don't know if this is going to help you, but --

A. Here is --

Q. Okay.

A. Here is a confirmation. There's a confirmation --

MR. SHEEHAN: Let her mark that.

MS. CHAITMAN: I will.

THE WITNESS: It says in the box, "We sold." All right. Or it would say, we bought. "We," referring to the firm. Madoff.

Now, if we had said you bought or you sold, that would be the customer bought. You know -- you know what I'm saying?

MR. SHEEHAN: Uh-huh.

THE WITNESS: All right. This is a standard dealer confirmation. It also has on here codes, the transaction code and a capacity code. Meaning that it has a number.

Meaning what is -- what -- what

capacity are we operating? Where -- on the back of the confirmation it says the capacity -- the transaction is transacted over the counter in New York and so on. It also has a capacity code, which is trading as principal or agent and so on.

Dubinsky -- okay -- is used to seeing a retail confirmation, which would have the opposite of that. So he makes a big point in his report of saying that Madoff reflected this wrong for the customer.

All right. He says that, you know -- now, that's -- there's -- nobody that was familiar with the dealer markets would make that kind of a statement. It's -- it's -- quite frankly, it's an embarrassment, you know, to -- to put that in the report.

All right. He then says that it -- this was in violation of his agreement with the customer to act as agent. If you look at the agreements that we have with our clients, and there's a whole series of when a customer opens an account agreement, where there's a trading authorization and so on, it says that Madoff, meaning Bernard L. Madoff, the client is giving Madoff -- is appointing Madoff his agent to

transact business for the customer.
So it says Madoff is the agent for the customer. It doesn't say that -- you know, so that means that Bernard Madoff, myself, when -- he's authorizing me as the only person that is authorized to transact the business with the firm.
So the firm is transacting business as principal for their own account, which it clearly states that on the confirmation. He -- this totally confused him for some reason.
BY MS. CHAITMAN:
Q. Mr. Madoff, can I just stop you for a second.
I'm going to show you a statement, but if -- if a -- if a customer's statement says bought 100 shares of IBM --
A. That means the customer bought it on the statement. The statement is showing it as the customer bought. Okay. The statement is assuming the customer -- that he's bought it from Madoff.
He knows it, because Madoff is sending the confirmation -- is sending the statement to the customer, saying, you -- he's reflecting the customer -- what the customer bought and sold. It's

not reflecting who he --
Q. Okay.
A. -- bought and sold it from --
Q. Okay. So you're --
A. -- because we already know that.
Q. You're distinguishing between the confirmation and the statements?
A. The statement -- yes. The statement is -- was -- the statement only shows a transaction on the settlement date. All statements are operated that way with every brokerage firm. The confirmation shows both the trade date and the settlement date.
MS. CHAITMAN: Okay. Let me mark as Exhibit 8 the document to which you've been referring.
(MADOFF EXHIBIT 8 WAS MARKED FOR IDENTIFICATION.)
BY MS. CHAITMAN:
Q. And if I can just summarize this, this is dated -- the trade date is October 14th, 2005. The settlement date is October 19th, 2005. And it says -- you've crossed out the account number, but it says, "Sold" -- "we sold 42 shares" --
A. To the customer.
Q. -- "of Wells Fargo"?

A. To the customer. Right.
Q. Okay. So, "we," is Bernard L. Madoff?
A. Right.
Q. So -- so let me just understand something. So if the customer was buying 42 shares of Wells Fargo, you wouldn't go into the marketplace and -- and buy it for the customer?
A. Well, we -- we could, but we buy it -- we'd go into the marketplace and buy it for our own account and then resell it to the customer.
Q. Okay.
A. That's how principal trades work.
Q. Okay. As a general statement with respect to the investment advisory customers --
A. Uh-huh.
Q. Now, obviously from whenever in 1992 you stopped executing split-strike trades, there weren't any purchases and sales?
A. That's correct.
Q. So --
MR. SHEEHAN: Object to the form. Sorry. What I'm going to do in the future is just say form or object.
MS. CHAITMAN: That's fine. It doesn't matter.

MR. SHEEHAN: I don't want to interrupt
the flow.
MS. CHAITMAN: Yeah, that's all right.
BY MS. CHAITMAN:
Q. I want to exclude the period after you
stopped executing trades that were reflected on the
statement. So whenever that was. Okay. Whether --
you know, whatever month of --
A. Okay.
Q. -- 1992 it was. Let me take the time before
that.
A. Yeah. Well, he's -- the Dubinsky report
that was making the statement of a trade that was a
convertible bond trade that was actually made. So the
example he's using -- he's not talking about a
split-strike.
He's talking -- he's saying that -- on the
convertible bond trade didn't really exist, because
Madoff's confirmation is incorrect.
Q. Okay.
A. So --
Q. So let me -- so let me just try to
understand something. I want to take the period -- I
want to limit my questions and your answers to the
period when you -- before the split-strike fraud

began.
A. Correct.
Q. Okay. So we're going to go earlier than whatever date that was in 1992, when the split-strike trades were not executed.
A. And the Dubinsky report that's making this statement is referring to a convertible bond trade that was in the period that you're talking about.
Q. Okay. So as to the convertible bond trades, is it generally true that the customers were buying from Madoff and selling to Madoff?
A. Correct. From Madoff's inventory that he already had or that he just bought or sold.
Q. Is -- is that true for everyone in the -- if -- if I take the convertible --
A. Operating as a dealer. Yes.
Q. So with your investment advisory customers, who were doing convertible arbitrage --
A. Uh-huh.
Q. -- their transactions always were with Madoff?
A. Correct.
Q. So --
A. All of our customers -- we always traded for --

Q. From your own inventory?
A. Other than theoretically in options, we traded from our own inventory.
Now, again, a dealer operates -- you -- a customer may tell the -- we may decide to sell stock to a customer or buy stock from a customer.
Now, we may already have that stock in our inventory, and we're selling it to the customer from inventory or the customer may -- we may not have the stock in inventory.
So we have to go out and buy it into -- from Wall Street, from the marketplace, into our inventory and then resell it to the customer. So that might happen over a period of the same day or it might happen over a period of a week and so on.
Which brings me to the next point. Okay? That --
Q. Can you -- can you remember that? Because I have a question about this.
A. Okay. Go ahead. Then give me that then.
Q. Give me a word, so I can remind you about your next point.
A. I'll remember.
Q. You promise?
A. Yes.

Q. Okay. So -- so let's say that in the convertible arbitrage strategy you had a need for 5,000 shares of IBM, because you were going to sell them to the convertible arbitrage customers.

A. Right.

Q. Okay. Mr. Dubinsky was looking for the purchase of 5,000 shares of IBM on a specific date in the market; right?

MR. SHEEHAN: Objection.

THE WITNESS: Uh-huh.

BY MS. CHAITMAN:

Q. Is that what he should have been doing?

A. I'm not sure I understand your question.

Q. Okay. Well, let me start it over again.

Dubinsky made the point in several instances that with the convertible arbitrage strategy the statements all together showed more purchases of a particular security than he could find records for --

A. Okay.

Q. -- on the New York Stock Exchange.

A. Okay. All right. So that's a -- that's a different subject, but -- all right. He -- if we're -- he -- what Dubinsky was -- was trying to establish or -- was that the -- the number of bonds that we -- let's say convertible bonds, because we're

talking about convertibles, because we're referring to bonds rather than stock.

Q. Okay.

A. Okay? So Dubinsky is claiming that if we show on a confirmation or in a customer account that we bought stock -- we sold stock to a customer or bonds to -- to a customer, that he looks to try and establish that there weren't enough bonds that actually traded in the marketplace at the time that we claim that we bought the bonds for the customer.

All right. So the way he researches that is he looks on the New York Stock Exchange, you know, number of bonds that traded on the New York Stock Exchange, and shows that that was, let's say, 100 bonds, and Madoff bought 200 bonds for a customer.

So, therefore, he couldn't have possibly bought 200 bonds for a customer, because only 100 bonds traded on the -- on the New York Stock Exchange.

All right. Now, the -- the fallacy of that is that, number one, convertible bonds, which is what he's researching here, do not trade on the New York Stock Exchange. They trade over the counter.

And to demonstrate that I happen to -- I brought this. This is a very expensive book, I was told. I happened to find it in the library here, for

some strange reason. It's the -- it's the Bible of -- of the bond markets. All right.

MR. GOLDMAN: Tell us the title, so we have it.

THE WITNESS: It's the, "Bond and Money Markets: Strategy, Trading, Analysis."

BY MS. CHAITMAN:

Q. And who is the author?

A. Moorad Choudhry or something of that sort.

MR. SHEEHAN: Could we have the spelling of that since we won't be able to take the book with us?

THE WITNESS: Moorad --

MS. CHAITMAN: Okay. So the -- the book is written by, M-o-o-r-a-d, and then his last name is, C-h-o-u-d-h-r-y. And it's published by Butterworth-Heinemann Finance, and it's called the, "Bond and Money Markets."

MR. SHEEHAN: What edition is it? Sorry. So I don't want to have the wrong book.

MS. CHAITMAN: You know what? I'll let you look at it. It -- it's -- it's first edition.

MR. SHEEHAN: Okay. Fine.

MS. CHAITMAN: First edition.

THE WITNESS: All right. You know, I happened to have made a copy of this. It's discussing the secondary market, which is what's -- you know, when you -- when you buy and sell stock for clients, you're buying in the secondary market, as opposed to the primary market.

The primary market is when a company goes public, they sell stock in the primary market. All right. Then after the company sells that stock to the public, it then trades -- the stock trades for the rest of the -- its life in the secondary market. All right.

MR. GOLDMAN: Bernie, you keep saying, "stock." You mean bond too; right?

THE WITNESS: Same thing.

MR. GOLDMAN: Okay.

THE WITNESS: You know. So, you know, it basically is talking about -- you know, this section was -- was talking about convertible bonds.

It says here -- it says, "Corporate bonds virtually everywhere are traded on an over-the-counter, OTC, basis. That is directly between counterparties over the telephone."

Meaning people like Madoff.

"Bonds are usually listed on the exchange." I'll read what it says. "On the New York Stock Exchange a low volume of trading in bonds takes place on the exchange itself, but this is dwarfed by the volume of trading in the bonds in the over-the-counter market."

In other words, what they're stating is that, although, this is a bond that is listed on the New York Stock Exchange, you know, most of the trading takes place in that bond in the over-the-counter market.

It's a listed bond. So you can buy it on the New York Stock Exchange, but no one does that. It's traded over the counter. So Dubinsky, you know, looks -- when he looks -- for example, it would be the same thing if he looked on the equity side of the market.

Let's say in -- in a split-strike trade. If he looked in -- because IBM trades on the New York Stock Exchange, if you just looked at the volume on the New York Stock Exchange to try and account for that -- for the customer trading, if the customer traded in the over-the-counter market, which is where we trade,

and where everybody else trades today, where it used to be 99 percent of the market, as I said earlier, traded on the floor of the exchange, now ten percent trades on the floor of the exchange, and the rest of it trades everywhere else.

And the convertible bonds have always been that way. In other words, so that Dubinsky looks at the -- in order to say, well, Madoff says he bought 200 bonds for a client.

Now, I'm looking on -- you know, in his report. He -- he looks on the New York Stock Exchange, and clearly he sees that that doesn't match.

He's ignoring the over-the-counter market. Even though in one of his examples it says the bond trading on the New York, and then it also says OTC market.

But bonds -- that was the price range he was trying to establish in that. There is -- if you spoke to anybody that knew anything -- you know, and I'm not trying to be -- I'm not trying to, you know, be sarcastic with him, but if you spoke to any other person, you know, that -- that understood how the markets work, and you said, I -- I just looked at the New York Stock

Exchange, and he said, well, wait a minute. Nobody trades bonds on the New York Stock Exchange. They trade them in the over-the-counter market.

So, you know, that was to me sort of surprising, that anybody would do that. It -- it demonstrated, you know, a total lack of understanding.

Again, this is not -- I don't want to be unfair to the man. I've had 50 years of experience dealing in things like this, where people who, you know, understand -- I wouldn't understand how lawyers operate.

Okay. So if you asked me how I'm supposed to give a deposition or anything else, I would not know. Of course, now I'm becoming an expert on that also, but it would not be -- I wouldn't -- you know, it wouldn't mean that --

I'm not saying Dubinsky is not a smart guy. He may be a very smart guy. He -- his CV is very good, but I've -- I've dealt with tons of people that are smart people and are experienced people, but, you know, it's like a brain surgeon going to a dentist for -- to have a brain surgery done.

All right. So, to get back to your statement, his -- his lack of understanding how a confirmation in a dealer market works, which is clearly a mistake, or where the volume were traded is another mistake.

He -- he goes on to make another mistake when he talks about the price range. Now, that's a little bit more complicated. Now, all of our transactions are -- are what's called average price transactions.

If you look on the back of my confirmation -- I'm going to take this for a second again -- it states, "Customer equity transactions" -- because this is an equity, being it says -- so it doesn't matter. It would be the same thing with bonds.

It says, "As per your authorization and instructions, we have executed this transaction for your account."

All right. It says, "Unless stated otherwise on the front of this confirmation, the trade price of your transaction is an average price and includes a commission equivalent of four cents per share markup. Full details of this transaction on request."

In other words, an average price transaction is when we buy stock for a customer or, you know, we buy stock. We -- we may start buying the stock on a Monday, and we may buy that Monday, Tuesday, Wednesday, Thursday, Friday. So we may buy a -- 1,000 shares over a period of three days, four days or five days.

We start on a Monday. We may finish on a Friday. That's typically because we're buying a large amount of bonds or stock for a client. And we may start buying the -- let's say, the bond at 98, and then we may wind up paying 100 by the time Friday is, because as the market moves.

So we're accumulating stock, a number of shares or bonds, over an average number of days at an average price.

So if we start buying a bond, let's say, at 98, and we wind up finishing buying it at 100, as the market moves up, we bought stock -- the bonds at 98, 99, 99 and a quarter and so on and so forth.

When we report the trade for the customer on Friday, which is when we're finished, we may have paid 90 -- 99 and three-quarters on the bond. All right. What Dubinsky -- you know,

that was the average that we accumulated for the customer.

Now, the 99 and three-quarters was bought over a period of three days. If -- if you look at -- if he looks at the price, the range of the stock, the price on the day that appears on the confirmation, it may show 100, which was where this -- the closing price was on that day.

All right. But, you know, we may -- we may sell it to the customer at 99 and three-quarters, which was the average price of that stock. He -- he thinks that that's a mistake.

How could we have bought the stock for the customer at 99 and three-quarters, when it shows that -- it shows that the cheapest price the stock traded was 100.

So he's saying that Madoff is -- is buying stock cheaper than he could have bought it in the marketplace. He's not accounting for the fact that we started buying it, you know, three days.

In other words, it wasn't -- he thinks it was all bought at one price on that day. Okay. If he -- if he bothered to read the back

of the confirmation, which he probably never did, you know, it clearly states that these are average price transactions. They're not one price.

Okay? We're --

MR. SHEEHAN: I just have a little housekeeping.

MS. CHAITMAN: Yeah.

MR. SHEEHAN: I'd like -- he read from that. I'd like to get that marked. That.

MS. CHAITMAN: This -- this marked.

MR. GOLDMAN: The photocopy.

MR. SHEEHAN: And his notes too. He's reading from notes.

THE WITNESS: This is just --

MS. CHAITMAN: That page. Okay. Good. Okay. So I'm going to mark as Exhibit 9, this is a page from the volume that we've just described. It's page 323.

MR. SHEEHAN: Great. And I think he had his notes that he was reading from too. So --

MS. CHAITMAN: Did you have notes that you were reading from?

MR. SHEEHAN: Yeah.

MR. GOLDMAN: Yeah, there was.
THE WITNESS: Where did I put them?
MS. CHAITMAN: Were there -- I did mark notes before. Are there new notes? I didn't notice.
MR. SHEEHAN: Yeah, there were notes that were part of the --
THE WITNESS: Here they are.
MS. CHAITMAN: Okay.
MR. GOLDMAN: There they are.
MS. CHAITMAN: Can I mark that?
THE WITNESS: You can have it, but it's my only copy. Okay. I am not finished with it yet. So don't -- don't take it.
MS. CHAITMAN: No. I'm not taking it.
(MADOFF EXHIBIT 9 WAS MARKED FOR IDENTIFICATION.)
MS. CHAITMAN: I'm going to mark as Exhibit 10 some handwritten notes that Mr. Madoff has been referring to, and I'm going to give it back to Mr. Madoff.
(MADOFF EXHIBIT 10 WAS MARKED FOR IDENTIFICATION.)
MR. SHEEHAN: For the record, there's notes on the back of that page too.

MS. CHAITMAN: Yeah, yeah.
MR. SHEEHAN: That'll be fine.
MS. CHAITMAN: But it's all one exhibit.
MR. SHEEHAN: Yes. It is one exhibit.
MS. CHAITMAN: Yeah.
THE WITNESS: Okay. So --
BY MS. CHAITMAN:
Q. So let -- just to catch up. One mistake he made was not understanding that on the trade confirmations it -- Madoff -- the firm is buying -- if it says, "bought," it means Madoff, the firm, bought?
A. It means that -- it means -- yes. The, "we," refers to the firm, Madoff, bought from the customer or sold to the customer.
Q. To the customer. Okay. And -- and sold from the firm's own inventory?
A. That's correct.
Q. Okay. And then you've made the point that Dubinsky looked for confirmation of the volume on the New York Stock Exchange or the London Stock Exchange, and, in fact, the convertible bonds were not sold on the -- you didn't buy them on the --
A. We traded in the over-the-counter market.
Q. Right.

A. And there was not even volume reported -- in the days -- the period of time he's looking for there was no volume -- actually, the majority of the volume was never reported in the over-the-counter market, because there was no volume requirements to report volume in bonds in the over-the-counter market until a later date.

Q. Okay. Do you --

A. It was very -- it was a very -- I don't -- it was very hazy, the -- the volume reporting requirements on -- on bond -- in the bond market was never really -- it was that way -- to this day it's sort of a gray area.

Q. Okay. All right. Now -- now you want to go -- do you have another area that you want to cover?

A. We've covered the confirmations and the statements, and we've covered the volume, and we've covered the price. So basically what I'm saying is his -- his criticism of the price of the volume and of the confirmations and statements are inaccurate.

Q. Now, Mr. Dubinsky says that there's no proof that the bonds were converted.

A. Okay. A -- the -- the typical strategy on convertible bonds is not to convert. In other words, nobody in their right mind should ever -- if a

convertible bond exists, you would never buy the stock, as opposed to buying the bond, if you could buy the bond at a discount.

In other words, a convertible bond trade -- a convertible bond -- let's say a bond is convertible into 100 shares of stock at $10 a share. All right. The -- the convertible bond always should trade at a premium above what it's convertible into the price of the stock at, because it has a coupon attached. It pays interest.

So convertible bonds typically trade at a premium. In other words, the bond theoretically would be worth 100 based upon the price of the stock at ten. The bond should always trade above 100.

It should trade at 101, 100 and a half and so on, because of the fact that the convertible bond is always -- is always going to be worth more than the stock, you know, because of the coupon that it has to it.

So convertible bonds sometimes trade at a discount, but rarely. Usually they trade at a premium. All right. When you combine a bond at -- a convertible bond at a -- at a discount, you could theoretically buy the bond, let's say, at 98, when it really should be selling at 100.

All right. Because you could buy the bond at 98. Sell the stock at ten. Would be -- you'd make a two point profit by converting it. So ideally you would say, okay. If you -- because then you'd have no risk.

You'd immediately buy the bond at a discount, sell the common stock simultaneously at a profit, and then convert one into the other. You exchange the bond by selling -- sending it to the conversion agent and say, here is your bond back. You know, I want stock back. And then you'd deliver the stock out, and you'd make a profit.

But most bonds trade at premiums, which is what they shouldn't be doing. All right. So the typical strategy of a convertible bond trader would be to -- to buy the bond either at a discount, which allows you to convert it immediately and make a profit, or hold the bond open and wait for the bond to go to a premium, where it historically should trade at, and then you sell out the bond, cover the stock and un -- what's called unwinding the transaction.

Which Dubinsky in his report does state that that is one of the -- he has that right. That that is the -- you do that kind of trading, you know, either buying it and converting it or unwinding the

transaction. He acknowledges -- he has that -- that part right.

He doesn't go into the fact that most bonds should not be converted, but anybody that is familiar with convertible bond trading would know that.

All right. The -- so what Dubinsky then does is he says that Madoff, you know, who -- who did buy bonds at a discount and sell the stock, you know, accordingly, it had a locked-in profit, he never physically converted -- he never sent the bonds in to be converted, you know, and take the profit that way, which he should have -- he should have done, you know.

But he said, there's no evidence that he ever put the bonds into conversion, because typically he would have found in our records, he assumes, some sort of instructions to the conversion agent to convert the bonds into stock.

All right. And if, in fact, we did that, he would -- he would find those instructions, but our strategy, as he acknowledges, as most people's strategy would be, to -- to not convert. He doesn't, you know, really go into the details of that.

So our strategy is basically buy the bond, sell the stock. And even though we have a profit and could convert it and lock in the profit, is we don't

convert it. We hold it open, and then we undo the whole transaction when the premium goes back to where it should be.

As a matter of fact, when David Kugel was first hired by me his job was to track all of the convertible bonds that traded in the marketplace. And we had a -- a whole spreadsheet that -- that we developed for him that tracked what every bond that was trading in the marketplace historically traded at.

So it would look and see that -- let's say IBM bonds traded over this past two years always went to a two point premium. It always traded at a two point premium.

You know, every now and then it -- it would go to a -- a discount or a one point premium, and then, you know, it would go back to that premium. So we would track them historically.

And we would always look to see when the bond was -- you know, was changing its relationship. And then we would go into the marketplace and buy those bonds. And that's what all convertible bonds traded, but that was our specialty, was trading this way.

All right. But anybody that was a good convertible bond trader did the same thing. It was

not unique to us. We happened to do more of it than most people.

All right. So our goal was to not convert. It was -- it was basically to unwind the transaction. All right. So because he -- he could never see that we were actually converting, and -- and he did find some that we converted, but not -- you know, but there were instances -- he made the assumption that we would always convert, and that -- that's totally untrue.

All right. Because what we would do would be when -- when the premium went to where we expected it to go to, we would, what's known as, unwind it or swap the transaction, which another dealer that had the transaction.

The problem -- the customer would make -- he could make more money theoretically, you know, within what we -- than what he made had we actually converted it. He could make a greater profit or he could make the same profit. It didn't matter.

But as a dealer our goal was to keep bonds out of conversion, because the more you kept the bonds out of conversion, you kept them open in the marketplace to trade at a -- at a future time.

So -- because once you convert a bond it's out of existence any longer. So the goal of all

traders is to keep these bonds in circulation. So you could --

It would be like if a customer -- if everybody took the stock that they bought, and they -- and they -- the company bought back more of their stock, when a company, like IBM, buys back their stock in the marketplace, they're taking it out of existence anymore. Nobody can trade that stock. So everybody wants to keep these bonds in circulation.

All right. Now, another mistake that he makes is if, in fact, we did convert -- you know, he makes the assumption that we would physically put the bonds ourselves into conversion, which, you know, I can understand him thinking that we would do that.

All right. But he makes the assumption that because he didn't see any instructions from Madoff to the conversion agent, that we didn't convert.

What he seems to not understand, which I can understand him not understanding, is we had -- he thinks our only bank was J.P. Morgan and Bank of New York, which -- in the 2000's those were our main banks.

J.P. Morgan was our primary bank when we were dealing with customers in split-strike, and our operating bank when we were dealing with our

market-making and dealer in -- in general, doing hundreds of thousands of trades, were handled through Bank of New York, which was our operating bank.

All right. In the period that he's looking at the convertible bonds in the '70s and the '80s, we had -- our banks were Chase Manhattan Bank, Continental Bank, Commercial Bank of North America, Meadowbrook National Bank, Marine Midland Bank.

You know, we also had clearing arrangements with -- with Barclays, with Carlo LaBorde (PHONETIC) & Company, Edwards & Hanley (PHONETIC) and others. In other words --

Q. Bear Stearns?

A. Huh?

Q. Bear Stearns?

A. Bear Stearns. So he like -- he doesn't see any of that, because he wouldn't. He's looking at -- you know, in the -- in the more recent period those banks have already been merged out or don't exist any longer.

You know, when we -- when we did convert bonds -- and we did convert bonds, you know. We didn't -- you know, the -- the majority of what we unwound, but we looked -- when we did convert a bond, we would convert the bond through one of those agents,

like Commercial Bank of North America, because if the bank's conversion agent was in Chicago, and we wanted to convert it, we would have -- we would have had to either send somebody out to Chicago or a messenger to convert the bond or mail it and hope that the mail -- the bonds actually got there.

You would never do that. You would -- you would give it to a bank, you know, and the bank would convert it for you. So we would give it to the Commercial Bank of North America.

They had -- they were a large clearing bank, and they would physically convert it with arrangements through whoever the conversion agent was doing that.

All right. He doesn't -- he has no way of knowing that, because those banks weren't -- he doesn't even know those banks existed when they were there. So the banks themselves, which we would convert, would -- would draft out.

It was the same thing like when we would deliver -- before we formed the clearing corporation on equities, if you sold stock to a brokerage firm in Chicago, in order to get paid for that you would have to mail that stock to Chicago and hope that they sent you a check while the bank -- you know, when they finally got it.

All right. As opposed to when we developed a clearing corporation, meaning the National Securities Clearing -- Clearing Corporation, NTTC, you know, we would -- they would clear the whole transaction.

So it would -- you know, of course, the industry -- another thing I got blamed for was founding the clearing corporation, because Wall Street cleared all of their transactions through basically a couple of major banks, like Citicorp, Chase and so on.

Nobody -- they handled -- they -- brokerage firms themselves didn't all have the facilities -- back office facility. So a bank used to clear those trades for them. The banks -- that was a great business for banks.

So the industry, because of the paperwork crisis, decided they had to have a -- they had to have a clearing corporation developed to clear the trades for the industry.

The major banks in the United States went crazy with that concept, because they wanted to keep all of the business themselves. They wanted brokerage firms to be required to -- to use the banks to clear the transactions rather than have a clearing corporation.

But finally we -- you know, the SEC put enough pressure on people to develop a clearing corporation. So we formed the National Securities Clearing Corporation, which I became the chairman of.

And then we merged also Depository Trust into that. So that brokerage firms would send their deliveries of stocks rather than through the mail, where you have to use the bank to do that, to use a clearing corporation, which settled all of the trades for the whole industry.

So what -- what happens today -- I'm telling you more than you probably are interested or wanting to know, but if I -- I may buy stock -- you know, sell 10,000 shares to Merrill Lynch and 10,000 shares to someone else and so on and so forth.

And buy and sell all day long with -- you know, like we did hundreds of thousands of transactions as -- as the report points out. The clearing corporation nets all of these transactions, you know, among the Wall Street brokerage firms.

And at the end of the day they net out -- I may have bought and sold a million shares during the day, but the net comes out to 500 shares between all my buys and sells.

They send me a bill at the end of the day

that I either have to pay on the 500 shares or get a check for the 500 shares of stock. And all of the banks went out of the clearing business, and now it's all handled by the National Securities Clearing Corporation Depository Trust.

Q. Okay. I want to go back, because that's one of the things that Dubinsky talks about, that he can't find trade confirmations. Now, we're dealing with --

A. So --

Q. -- the convertible arbitrage strategy -- strategy in the 1980s.

THE COURT REPORTER: Can I ask for a break?

MS. CHAITMAN: Of course. Of course.

THE VIDEOGRAPHER: Going off the record. The time is 12:09.

(RECESS FROM 12:09 P.M. TO 12:16 P.M.)

THE VIDEOGRAPHER: Back on the record. The time is 12:16.

THE WITNESS: Okay. So I think we were at the -- the clearing of -- oh, so that his inability to find instructions to convert bonds, you know, all the time was that he was not aware of the fact that if we did convert bonds we had the ability and did convert bonds through other

clearing -- other clearing banks.
BY MS. CHAITMAN:
Q. So that you wouldn't have the records for that?
A. Wouldn't -- they would not exist, because there would be no way that we would put the bonds physically for the most part -- we did some -- some of them, depending upon what the year it was and what he was looking for, but, as I say, the idea was not to -- to actually convert, but --
Q. Right.
A. -- to arrange a swap arrangement --
Q. Right.
A. -- or a clearing arrangement.
Q. Okay. Now, he also makes the point that he couldn't find trade confirmations.
A. Okay. That -- when -- one of the times that -- when you first came down, if you still remember --
Q. And when you say, "you," are you --
A. Meaning David Sheehan --
Q. Sheehan.
A. -- and his staff of attorneys came down here. I think it was at that time that they mentioned to me that they could not find confirmations --

counterparty confirmations on transactions.

So -- and we were buying and selling stock through other brokerage firms for clients. They expected us to -- they saw that we had confirmations selling and buying stocks from the customer, but they did not find any confirmations to the broker.

All right. Now, number one, if we were dealing as principal, which clearly our confirmations stated, and we always did it as principal, we would -- there wouldn't be a counterparty on the other side of the trade, because we were the counterparty on the other side of the trade.

But when we did go out into the street to buy the stock, you know, there would be a counterparty, you know, on the other side of the trade. He couldn't find the confirmation. So he saw thousands of confirmations with clients, but he never saw any broker confirmations, period.

So he said to the -- you weren't buying and selling stock from anywhere. You know, there were no confirmations. And I looked at him, and I said, well, no. You know, I was sort of -- didn't understand the question, because I didn't understand why he expected there to find confirmations.

Q. When you say, "him," to whom are you

referring?
A. The trustee.
Q. Okay.
A. And -- so it was that -- you know, I then realized that, you know, he expected to find -- you know, just as he found a broker confirmation, he assumed that every time we went and sold or bought stock from a customer we bought it from another broker, which sometimes we did.
Sometimes we bought it out of inventory. If it was bought out of inventory, there wouldn't be -- there would be a customer confirmation at an earlier date that -- that we put it into our inventory, but --
All right. But, I said, there -- there are no confirmations. And that sort of went on deaf ears. Now, number one, I said, first of all, you're looking at -- we don't -- we don't keep any records of customer confirmations from the past six years.
I said, the record retention period for the industry is six years. So after six years everybody gets rid of all of their records. You can imagine, we do hundreds of thousands of trades everyday.
If we -- if we kept paperwork for all of those transactions, you know, it would be impossible. I said, so we keep customer confirmations for, you

know, a longer period of time, because customers need that for tax purposes, audits and so on and so forth.

But a general policy, we don't keep records for more than six years, because that's what the record retention period does. Even though we did have records, because -- and I used to always yell at my people.

I used to say, after six years, get rid of everything, because I'm paying for storage on this stuff. But I said, wait a minute. I said, you won't -- you won't find confirmations for any of my trades.

I said, I do hundreds of thousands of shares -- of trades everyday. I said, you don't find -- you can't find any of those confirmations. I said, so are you now assuming because you can't find a confirmation when my market-makers or proprietary traders bought hundreds of thousands of trades everyday that those trades didn't take place either?

And there was no answer. I said, first of all, are you aware of the fact that brokers stopped issuing confirmations years ago?

Q. How --

A. Because of the clearing corporation.

Q. How many years ago?

A. Well, there's what's called a continuous net settlement, which I started to say. In other words, when we buy and sell stock all day long, anybody buys and sell stocks when they're long, they don't issue a counterparty confirmation to Merrill Lynch, because those trades are reported automatically through the clearinghouse, and you get -- you don't get confirmations.

Customers get -- confirmations get mailed out back and forth, but the industry does not issue confirmations to each other, you know, as a general rule. You can, if you want, but nobody would do that.

So I said, so making your supposition that you can't find a confirmation from a brokerage firm on the other side of a customer trade, and you can't find -- you won't find a confirmation on the other side of a - of a non-customer trade either, because they don't -- I don't have any customer confirmations in my records.

I said, how can you not understand that? Now, maybe -- like my lawyers -- you can't expect him to understand. They're lawyers. They're not brokerage firms.

I said, all right, but you're asking me questions -- you know, they're asking me questions

that they have to get somebody that explains that.
Now, certainly Dubinsky would know that, but he doesn't even mention -- in fairness to Dubinsky, he doesn't -- he doesn't mention anything about this confirmation issue, because he clearly knows that much.
This was the trustee, Irving Picard, and his attorneys, or, I guess, and David's partners or whatever. And maybe they had no reason to know that either, because the average person would not know that.
Q. When did the continuous net settlement system come into place? Was it in place in the '80s?
A. Yes. Probably in the '80s.
Q. Okay.
A. So --
Q. So how -- how does that work? At the end of the day you just get a computerized printout --
A. Right.
Q. -- with -- with the net amount that you have to sell --
A. Right.
Q. -- or receive?
A. Right.
Q. Okay. Okay. And if you were doing

over-the-counter purchases and sales of subordinated bonds, convertible bonds --
A. Yeah.
Q. -- was that done on a continuous net settlement basis also?
A. No.
Q. How was that done?
A. It was just -- it was -- you wouldn't issue a confirmation. It was -- well, it depends -- you want to know about a convertible bond for a -- for a claim?
Q. When you were doing the investment -- I'm focusing on the 1980s.
A. Right.
Q. The convertible arbitrage transactions.
A. Uh-huh. We wouldn't have -- there wouldn't be -- it -- we would issue, you know, a -- we would issue a confirmation there, but we wouldn't have those in our records in the '80s, because we don't hold the confirmations after six years.
Q. Right. And the -- if you were -- you were selling to the customer, you had a confirmation, but when you were buying it --
A. There wouldn't be a confirmation.
Q. -- for inventory, there wouldn't be a

confirmation?
A. No. Not -- not after six years.
Q. Okay. Okay. So we're -- we're going -- we started out listing the mistakes that you felt --
A. Right.
Q. -- Dubinsky made. Did he make a mistake with respect to using the trade date versus the settlement date; is that what you covered already?
A. The average price. Yes.
Q. Okay.
A. On the ranges?
Q. Yeah.
A. Well, it's -- if you look at the range on -- you wouldn't have -- there wouldn't be a -- there wouldn't be a record of the ranges.
Well, first of all, you can't even use the ranges, because you'd have to -- well, he -- in order to -- in order -- in other words, if the SEC was doing an audit, which they did all of the time as to, you know, best -- what's called best execution, they would actually look and see, you know, what dates you bought this stock.
Okay. You know, if it was an average price transaction, they would have to go back and look at all of the days, you know, that you accumulated the

stock, not just use the last day that you reported the trade to the customer, because they understand what an average price is.

Now, the only ones -- typically if you call up a broker, and you tell him, buy me, you know, 50 shares of IBM or 200 shares of IBM, they would actually -- they wouldn't do that over the course of a day.

All right. Because that -- you know, they would just buy -- it's a small amount of a lot, but if you're dealing with -- with discretionary accounts or you're accumulating a larger -- with a -- a portfolio of accounts, the way we always traded, you would always do an average price transaction.

So they -- what they would have to do is go back, which they would do, and see what was your real average price. They would verify what the average price was, not just look at the last day, because they would realize that you would never be able to find a -- you would rarely be able to find a match, because you'd --

Q. Right.

A. -- have done it, you know, at different periods of time.

Q. Right, right. Are there other general

mistakes that you can recall from --
A. Well, we -- he mentions that David -- well, he talks about David Kugel as -- you know, he mentions in the report that David Kugel -- in other words, he acknowledges that they don't have records going back to the time that David -- he's talking about David Kugel, because we don't -- there are no records.
So he's -- he points out as a footnote that he's using David Kugel's information to plea bargain that he created fictitious trades. Now, as I stated before, that makes no sense to me at all.
And I think that David Kugel -- I'm not even -- I'm not saying that he's lying. I'm saying that he misinterpreted -- what he said when he created a trade, he's misinterpreting what he's saying.
In other words, if -- if -- if I -- if I give instructions to -- you know, if I wanted -- if I decide I want to sell stock to a customer out of my inventory, I -- I could say to someone like David Kugel, you know, I want to sell stock to -- I want to sell, you know, IBM to the client.
So we have 100 bonds in -- 100 convertible bonds in the account. I want to sell to Carl Shapiro, you know, 20 bonds. You know, I want to do a convertible trade for him.

Give instructions, you know, to Annette to buy, you know, convertible bond, you know, for -- for Carl Shapiro, and, you know, just tell her what -- tell them what the formula -- what the formula is, so she knows how many bonds -- how to set the trade up.

He -- you know, he would write these instruction sheet -- this -- this convertible bond, you've got to -- if you're going to do 50 bonds, you know, this is -- this is how many bonds, and this is how much stock you sell.

And it gives her like -- she then looks at my inventory record and sees, okay. He -- he has X number of bonds he can convert. Takes it out of -- out of the investment account or the firm's trading account into this customer account.

So David Kugel has no idea, nor has any other trader, what the -- what the firm's net inventory. We could have -- we could have -- we have five different traders trading IBM convert. They're all competing with each other.

They don't want to -- they never want David to know what his position is, because he -- you know, they're competing with him. That's part of the strategy of the firm, all market-making firms.

So he -- if -- if -- if someone says, well,

give them instructions, he'll give -- he'll give Annette or Jodi instructions of how many bonds to -- to buy and sell for this customer.

He has no idea after that where that -- where it's coming from. He doesn't know whether it's coming from the firm's inventory, from his inventory or someone else's inventory. He would not know that.

So if -- if he says to somebody, which is a very -- I'm going back to like when I told in my proffer agreement that I short stock to a customer. And they said, you sold stock to a customer? How can you short stock a customer? You're selling them stock that you don't own.

And I say, yeah, market-makers do that all day long. That's part of our business. We're shorting stock to a customer. And he -- and an alarm bell goes off and says, well, how can you sell stock to a customer you don't own?

Q. Okay. Well, that --

A. You know --

Q. Let me ask you that.

A. Okay.

Q. Was that illegal, for you to be selling stock to a customer that you didn't own?

A. No. I'll -- I'll -- I'll explain that too,

because that's -- that's another issue, but let me just finish this thing.

So that if, in fact, David Kugel or anybody is -- is giving instructions to the operations side of the business, meaning Annette or Jodi, of -- of how to do a trade, that doesn't mean that's a fictitious trade.

He -- you know, he has no idea. He's just telling her how to do the allocation of the trade. Not -- he doesn't know if -- you know, whether or not the firm has it in inventory or doesn't have it in inventory.

But even if I wanted to short it to the customer, let's say I didn't have it in inventory, there's nothing wrong with that. I am allowed to short stock to a customer.

Theoretically I could have shorted all of these split-strike trades to the customer forever. My violation was not going short. It was not recording the short on my financial records as a liability, which I guarantee you, nobody understands that.

To this day if I called up the prosecutor, Litt, and I said to him, you know, I don't have -- there's nothing wrong with me shorting stock. He would look at me and say, that's not true. You can't

short to a customer.

And I can prove that to you, because I don't know how many times, you know, I had to -- I had to argue this case in front of the SEC and with the issuing companies, like Apple computer and everything at -- when we were at board meetings with the IBM.

Average company does not want you to ever short stock. In other words, every company that trades on an exchange does not want a brokerage firm to sell stock that he doesn't own.

They think that short selling is illegal, is immoral and should never be done. All right. That's what they want. They don't want ever -- they don't want anybody to be able to short stock.

Just like nobody wanted, you know, George Soros to short Sterling and make a billion dollars shorting -- you know, breaking the market on -- on shorting.

But what they don't understand is that shorting is a very -- you know, a very, you know, legitimate market, you know, thing to do in the marketplace, and it's required, because it keeps stocks from going to artificially high prices.

All right. And the -- it certainly happens that as I was -- when I was looking for -- reading

another book, one of the things I do here is I tutor people on finance and the marketplace.

Of course, the Bureau of Prisons only big concern is that I'm teaching them a fraud. All right. So originally I was told, no, you can't tutor or teach anybody here, you know, but I said, listen, I said, they -- you have outside people coming in here, professors, to -- to lecture, you know, as part of, you know, the justice department, and they're all asking, can Bernie Madoff -- you have Bernie Madoff sitting here. Let him lecture people.

And the Bureau of Prisons says, the newspapers are going to say that Bernie Madoff is -- is perpetuating a fraud. Just like when they put me in charge -- when I first got here, my first job was in the engraving department.

I was engraving signs, you know, that they hung on walls here. So the -- the Wall Street Journal said, Bernie's first job is engraving, you know. So they said, take him away from the engraving department.

And they -- I had seven jobs in seven days, because no matter what I was doing, including I was in charge of cleaning the computers, you know, can't do that, you know, because you're reprogramming the

computer.

I couldn't reprogram my telephone number. You know, that's not my -- not my strengths here. So I'm now -- my job is now cleaning the laundry room. That's my job here.

The -- I'll -- I'll -- there's a book that was written by someone like Dubinsky. He has a very big -- and he talks about --

MR. GOLDMAN: Tell us the name of the book and the author, Bernie.

THE WITNESS: I don't even know what it --

MS. CHAITMAN: May I mark that whole thing as --

THE WITNESS: "Secret Weapon."

MS. CHAITMAN: -- the next exhibit?

MR. SHEEHAN: Could you just mark it as an exhibit?

MS. CHAITMAN: Yeah. Let me just mark it.

Can I mark this whole thing?

THE WITNESS: Yeah.

MS. CHAITMAN: Is it all connected?

THE WITNESS: Yeah.

MS. CHAITMAN: Is it all one --

THE WITNESS: Yeah, yeah.
MS. CHAITMAN: Okay.
THE WITNESS: Anyhow --
MS. CHAITMAN: So I'm marking as Exhibit 11 --
(MADOFF EXHIBIT 11 WAS MARKED FOR IDENTIFICATION.)
BY MS. CHAITMAN:
Q. -- a -- it says the author is Kevin Freeman, and the title is, "Secret Weapon." And it's pages -- I don't know what the first page is, but the --
MR. SHEEHAN: It's the inside cover.
Q. The inside cover is 78. 78 to 83, and then 123 and 124.
A. He's talking about how the markets work. He talks about bear runs, and he talks about naked short selling, and he talks about the Madoff exemption.
Q. Is that a term that's in the industry?
A. Naked -- yeah, naked --
Q. No, but the Madoff exemption?
A. Yes. In other words, he goes on to state, "Long before he was convicted of defrauding the American public of some 50 billion through a Ponzi scheme, Bernie Madoff was chairman of the National Association of Securities Dealers, NASD. In that

capacity he appeared regularly at the SEC and served on agency panels."

And then he quotes them as saying, "When it came to Bernie, people paid more attention, said Georgetown University law school professor, Donald Langevoort, who worked on an SEC panel with Madoff."

He quoted -- then goes on to quote, saying, "This was a guy who really knew how markets worked. He was the grownup in the room. If there was a confession" -- "if there was confusion or a question or two people on opposite sides going at each other, Bernie would speak up and explain what the deal was. I'm sure in some ways that may have thrown even the commission off their guard."

"One of Madoff's key accomplishments at the SEC was to get a rule approved, the so-called Madoff exemption, that allowed market-makers to naked short sell. Market-makers are broker-dealer firms that gain fees by holding shares of securities in order to help grease the wheels of trading."

"If someone buys stock in a company, it is the market-maker who sells the stock and then finds an offsetting order. This keeps the markets flowing smoothly."

"In the case of short selling if the

market-maker has no inventory of the shares sold, the firm is allowed to create an IOU for the shares. This is a form of naked short selling legalized by the Madoff market exemption."

Basically what he's stating, this is the -- he's quoting this law professor at Georgetown, who served on a panel with me, that says that I could sell stock short.

So selling stock short, not only is it something that is to the benefit of the marketplace, market-makers are required to sell stock short. So theoretically I don't ever have to, you know, buy stock for a customer.

I'm responsible for producing that stock if the customer ever wants it. And any profit that the customer makes in the trade I'm responsible for.

So in theory, which my attorney said to me, Bernie, you know, you can -- you're not doing anything wrong with being short these split-strike trades to the client, you know. You know, I can short all day long, and I do short stock at times. Every brokerage firm short stocks to a customer.

My violation was not showing the IOU, the liability, you know, on my balance sheet. That's what the violation was. I would have also been out of

ratio, you know, by not -- if I did show that. So --

Q. So you mean that there was -- do you -- if you sell short, do you have an obligation -- is it your understanding that you have an obligation to the customer?

A. To produce that stock if the customer wants it.

Q. Right, but do you have an obligation -- and we're talking about the investment advisory customer.

A. Yes.

Q. Did you have an obligation to tell the customer, your statement shows 30 shares of IBM, but I'm actually short that --

A. No.

Q. -- position?

A. No.

Q. So it was --

A. No. You don't -- you're not --

Q. So if -- if a customer is -- if a securities customer is dealing with a market-maker --

A. Or anybody.

Q. Well, only the market-makers have the exemption.

A. No, no. That's -- that's wrong. The market -- the -- the -- anybody can sell stock short

to a customer, you know. The -- it's -- they always can sell stock through shorting, but he --

You know, what he's talking about is -- you know, is that, you know, I was the one that argued for the short stock selling, because what he -- he confuses the situation, because there are certain requirements that a market -- if a market-maker is shorting stock to a customer or to anybody, he has to -- his records have to show that he shorted the stock.

MR. SHEEHAN: Who is, "he"?

THE WITNESS: Meaning the brokerage firm.

MR. SHEEHAN: Okay.

BY MS. CHAITMAN:

Q. Okay. So the brokerage -- so let's just take the split-strike. Okay?

MR. GOLDMAN: Wait. Before -- before you ask the question, I think he said -- and the transcript will speak for itself, obviously, but I think he said that the -- the market-maker was required to sell short. Did you mean permitted to sell short?

THE WITNESS: Well, you -- you're required to make a two-sided market. So if, in

fact, you -- you're not required to sell stock to the customer short. You're allowed to sell stock to a customer short.

MR. GOLDMAN: That's --

THE WITNESS: If -- in other words, that's the difference. You have to be -- you have to sell it at a price that's related to the marketplace, you know.

And you have to -- you -- you -- you would put it on your records that you're selling short on the original order ticket. You have to mark it, because it's what they call an uptake rule and so on, which means you have to -- it's not important. It's confusing.

BY MS. CHAITMAN:

Q. Okay. So -- so basically if you take John Smith. He's a split-strike customer. His statement shows that he owns a portfolio of securities, and, in fact, you don't at that time own them.

A. No.

Q. Are you saying that there's nothing fraudulent about issuing a statement to an IA customer --

A. Uh-huh.

Q. -- an investment advisory customer, showing

securities as having been purchased for the customer, when, in fact, they haven't been purchased?
A. That's correct.
MR. SHEEHAN: Object.
THE WITNESS: You don't have to -- you're not required. It's not the customer's business whether or not you're selling the stock from long or whether you're selling it short.
BY MS. CHAITMAN:
Q. Okay. So what you're saying is that the fact that the split-strike conversion strategy was carried out from sometime in 1992 until December of 2008 without your actually owning the securities that showed up on the statements, that was not a fraud, but the fraud was that you didn't disclose to the SEC on your focus reports --
A. That's correct.
Q. -- that you had that debt?
A. Right.
MR. SHEEHAN: Objection. Objection, but go ahead.
THE WITNESS: That's correct.
BY MS. CHAITMAN:
Q. Okay. Can you put this in your own words, so we don't have any confusion about it? I just want

it to be very clear on the record.
    A.   That there is nothing wrong with selling stock to a customer out of a short position. In other words, you do not have -- that is not a violation. The violation -- and it is typical for a brokerage firm to at times sell stock to a customer short. That is not a violation itself.
          And the customer doesn't care whether the stock that you are selling him is stock that you actually are long or short. You know, the customer assumes, as -- and, rightfully so, that if he wants -- if wants delivery of those securities, or he wants the profit made from the transaction, that you're still obligated to do that.
          So had I reported this transaction on my financial records as a liability, that would be -- that would be all right, but because I didn't, that's where the violation was.
          Now, obviously, I couldn't do that, because my -- my liabilities would have been too great. Which brings me to another error, you know, that I find in the Dubinsky report. See if I can remember where it was. Related to that. The -- well --
    Q.   Do you -- do you want -- do you want her to read back your last comment? Maybe it'll prompt you

to --
A. No.
Q. -- to recall.
A. No. I'll think of it. First of all, here is this. This is yours, and this is yours, I think. I have too much paperwork here.
Q. I just want to go back -- back to this. Forgive me, but it intrigues me.
So the entire portfolio that was purportedly owned by the investment advisory customers from 19 -- from whenever it was in 1992 that you stopped buying the securities that showed up on the statements until 2008, you had always honored withdrawals?
A. Right.
Q. You never defaulted in any of your obligations to the customers?
A. Not until, you know, I went out of business.
Q. Right. Okay. So the only violation of law that you understand you committed was not disclosing on your focus reports that you had sold short; is that right?
A. Not that I had sold short. That I didn't -- I did not reflect my liabilities. That was because of the short position.
Q. Right.

A. The short position would have reflected a liability to the customer.
Q. To purchase the shares?
A. I did not show that.
Q. Okay. Okay. And I just want to ask you one other thing, which is not related, except it came into my mind.
A. Okay. Before you do that --
Q. Oh, okay.
A. -- I remembered what I was going to say.
Q. Go ahead.
A. Dubinsky states that -- well, he -- he -- he acknowledges that he -- he doesn't have records to prove this, but he infers in some language that because I did not on my focus reports --
One of the -- one of the things that he -- points he makes to demonstrate that I was -- he was trying to establish his theory, obviously, initiated by the trustee, that my fraud went back almost to the beginning of time.
All right. That I didn't do any business, because I did not reflect any customer business on my financials -- on my focus reports. Customers that were -- you know, activity, long and shorts.
So -- because he says that, you know, I

mean, he -- he's saying he could have been doing business in -- for customers in the '80s or '70s or '60s, the '70s even, because my focus reports, which he doesn't have, by the way, because he doesn't -- he can't get that, but he's assuming that there was no customer, you know, business -- no customer positions shown on my focus reports.

All right. But this is a common error made in -- by customers in general. I used to get calls from people that would say, listen, Merrill Lynch doesn't show, you know, my assets on a position.

He's doing all of this business with -- with me or with all of these customers, and it doesn't show on Merrill Lynch's financial statements, you know, any of this business.

I said, well, are you talking about his balance sheet? He says, yeah. I said, brokerage firms do not show customer assets fully paid for securities on their balance sheets. Otherwise, Merrill Lynch would have trillions and trillions of dollars.

I said, you know, when a brokerage firm files a focus report or any balance sheet, when they send you, you know, they do not -- they do not show or record customers' fully paid for securities.

So if a customer had a margin account or a -- you know, a liability, he would have to show a payable or a receivable from a customer.

But if a customer buys IBM, pays for the IBM, and the brokerage firm has that IBM in his -- you know, in his box or at the clearing corporation, that doesn't appear on his records anywhere. So, you know, as long -- if I was -- if I had a -- a liability, and not from a short sale, because, you know, the short sale -- the short sale, if it's a liability, would appear on it, but if he was long and short, the same -- it's another thing.

When you're trading in convertible securities, you're -- you're allowed to net the -- the receivable and payable for the same customer against each other. So that stuff does not appear on a focus report.

Now, that's a basic accounting. Anybody that's a -- anybody that's familiar with any brokerage firm accounting would know that question. So why he would think there would be a -- that would be on my -- on my balance sheet, it's not certain.

What would be on my balance sheet would be if the customer owed me money, which is another thing. There's a -- there's a major flaw. And this I have to

address, even though you didn't ask me about it.
The trustee somehow or other when I read the GAO report -- and I actually spoke to the treasury secretary -- the inspector general of the treasury department about this.
In the -- in the -- in the GAO report, issued by the government, which is a report that he issues from the general accounting -- accountability office, based upon the trustee's report, there's a --
I have a -- this is something that -- David, you might ask Irving Picard how he had managed to get this thing slipped through.
Jeffry Picower --
MR. GOLDMAN: Tell us what you're looking at, Bernie.
THE WITNESS: Oh, this is the GA -- a copy -- part of the G -- the SIPC report, the GAO report, which is -- took seven years to -- to finally get, which my attorneys assured me was going to be done immediately. It took seven years to finally get them to do the results of -- of the trustee's report.
There's a 6.3 billion dollar liability to the debit balance in Jeffrey Picower's account, which was a -- a major issue was one of

the things that created my whole problem. This relates to them -- them not honoring their commitments with me when -- and --

Okay. This is on -- and I can't give you -- this is my only copy, but you can find it. It's on page 37 of the -- of the GAO report.

And I'm quoting now the General Account -- Accounting Office. It says, "As part of our review of the records provided by the trustee, we noted some customer accounts having a negative balance."

"For example, in the Picower case the records showed a negative balance of 6.3 billion dollars. In theory this reflected some kind of margin account or debit balance."

"The trustee told us even though such an account would not be in keeping with the standard industry practice, such negative balances raised the question of whether the reported amounts represent a debt owed by the customers to the Madoff firm."

Now, that clearly is a debt. All right. Jeffry Picower owed me 6.3 billion dollars. All right. The trustee -- I mean, the GAO -- thank God. He questioned the trustee,

what about the 6.3 billion dollars?

And for some reason the trustee claimed, well, we can ignore that, you know. That's not typical.

All right. Now, if you look at my records or any brokerage firm's records or account agreements with customers, it clearly states that, you know, they're responsible for any debit balances or margin accounts that they have with the firm.

It says here on my trading authorization, which clients sign, it says, "The undersigned hereby agrees to indemnify and hold you harmless from and to pay you promptly on demand any and all losses arising thereof or debit balance due hereon."

In other words, every customer that opens a margin account or has any debt with a brokerage firm owes them that money. All right.

MS. CHAITMAN: Okay. Can I just mark -- okay. I'm going to mark as Exhibit 12 -- can I take that? Is that one document, the one you just read from?

THE WITNESS: Yeah.

MS. CHAITMAN: Okay. So I'm marking as

Exhibit 12 -- this is a trading authorization.

THE WITNESS: Here, what -- use this one, because this one is -- this copy is better. It's the same type of thing.

MS. CHAITMAN: Okay. So I'm -- you know what? Can I mark them both? Because you read this one. So --

THE WITNESS: It's the same -- it says the same thing.

MS. CHAITMAN: Okay. All right. So I'm marking as Exhibit 12 the one you read.

(MADOFF EXHIBIT 12 WAS MARKED FOR IDENTIFICATION.)

MS. CHAITMAN: And I'm going to mark as Exhibit 13 something called, "Trading authorization limited to purchases and sales."

(MADOFF EXHIBIT 13 WAS MARKED FOR IDENTIFICATION.)

BY MS. CHAITMAN:

Q. And can you just read in whatever the language is that you want?

A. Uh-huh. All right. So for some reason, you know, the trustee convinced the GAO -- I don't -- maybe they didn't care that much about it -- that this six -- that this debit balance was not typical at a

brokerage firm or that they weren't. Now --

Q. Wait. I just want to go back to this. I don't want to lose track of it.

MR. SHEEHAN: Sure.

BY MS. CHAITMAN:

Q. You -- you said that this has better language on the points.

A. It doesn't -- it just shows the customer -- every customer agreement always has that customers are responsible for any debit balance --

Q. Okay.

A. -- they owe the brokerage firm.

Q. Okay. Okay.

(The following pages were redacted pp. 159:14-160:18)

Q. Okay.
A. All right.
Q. So I want to go back to one other question. When you stopped buying securities on the split-strike customer accounts, and you said you did that for a short period of time, and then you stopped.
A. It wasn't a short period of time. It was

from 1992 to 2008.

Q. Right, but I understood your testimony to be that when you initiated that program you actually were buying.

A. Oh.

Q. Am I correct about that?

A. Yes, but that was prior to that. That was before the hedge funds. That was prior to '92.

Q. Oh, okay. Okay. Okay. I'm glad you clarified that.

So what -- what were you doing with the money? Let's say that Customer A sent you a million dollars for the split-strike program.

A. It went into --

Q. What --

A. -- treasury bills.

Q. It went into U.S. treasury bills?

A. Well, some of it went into treasury bills. Some of it went back to customers when they withdrew profits --

Q. Okay.

A. -- that didn't exist.

Q. The -- the portion that went into treasury bills, were those interest-paying treasury bills?

A. Yeah.

Q. And do you remember in 1992 what the interest rate was -- was on the treasury bills?
A. Probably like two percent, something like that, on -- you know, one and a half, two percent.
Q. Okay. And is it fair to say that for the whole period up until 2008 that the money that wasn't used to redeem customer accounts was in treasury bills?
A. Probably, yeah.
Q. And that would have been interest-earning treasury bills?
A. Yeah.
Q. Whatever the current interest rate was; is that right?
A. Uh-huh, uh-huh.
Q. Were these longer-term treasury bills --
A. No.
Q. -- or shorter term?
A. No. They were short term. They were T-bills, you know. You know, the short term. One to two years.
Q. Okay. So the customers' money was earning some percentage?
A. Yeah.
Q. Whatever the treasury bill rate was?

A. Yeah, but there wasn't enough treasury bills to cover all of the liabilities.

MS. CHAITMAN: Okay. Does everybody -- do you want to take a break, and then we'll go through until --

MR. SHEEHAN: Sure. As a --

MS. CHAITMAN: Because I'm about to -- to go through the Dubinsky report, which is going to be tedious. Why don't we take --

MR. SHEEHAN: Whatever.

MS. CHAITMAN: -- five minutes.

MR. SHEEHAN: Five minutes?

MS. CHAITMAN: Yeah.

MR. SHEEHAN: That's good.

THE VIDEOGRAPHER: Going off the record. The time is 13:01.

(RECESS FROM 1:01 P.M. TO 1:18 P.M.)

(MADOFF EXHIBIT 14 WAS MARKED FOR IDENTIFICATION.)

THE VIDEOGRAPHER: Back on the record. This begins media number three in the deposition of Bernard L. Madoff. The time is 13:18.

BY MS. CHAITMAN:

Q. Mr. Madoff, I've just given you what had previously been marked in your -- in a -- your

deposition in June, but I've renumbered it as Madoff Exhibit 14.

This is a statement for one of my clients, Arthur Blecker. It's dated June 30th, 1986. And what is the trading strategy on this statement?

A. It looks like a convertible bond, buying convertible bonds and selling the -- the related stock.

Q. Okay. And where it says long --

A. Uh-huh.

Q. On this statement, which was sent to the customer, long means that the customer owns it; right?

A. Correct.

Q. Whereas, on the confirmation, the actual trade confirmation, it would be the opposite; right? It would show --

A. That -- that Madoff sold it to the customer. "We sold," it would say.

Q. It would say the firm --

A. The firm sold it to the customer.

Q. -- sold to the customer.

Okay. And, conversely, where it says, "Short, Interco, Inc." --

A. It would show we bought from the customer.

Q. Okay. And am I correct that your testimony

is that all of the long positions reflected on the arbitrage strategy statements were actual positions that you held?
A. That's correct.
Q. Okay. So, if you can, I want you to take a look in the Dubinsky report, which we've marked as Exhibit --
MS. CHAITMAN: What did we mark it as?
MS. FEIN: 7.
MS. CHAITMAN: Dubinsky --
MS. FEIN: 7.
MR. SHEEHAN: 7.
BY MS. CHAITMAN:
Q. 7. As Exhibit 7. If you could, look at page 16.
A. Okay.
Q. In paragraph 35, this is the beginning of Dubinsky's factual background, and it says, "BLMIS." "In 1960 Madoff founded BLMIS as a sole proprietorship. BLMIS" --
MS. CHAITMAN: Page 16.
MR. GOLDMAN: Okay.
BY MS. CHAITMAN:
Q. -- "a market-making business in over-the-counter stocks was registered as a

broker-dealer with the Securities and Exchange Commission as of January 19th, 1960 and operated three business units."

"One, a market-making business, two, a proprietary trading business, and then," parentheses, "together with the market-making business, known inside BLMIS as House Five," end paren, "and, three, an investment advisory business," paren, "known inside BLMIS as House 17."

A. Right.

Q. Now, did people at your firm use the phrase House 17?

A. In the firm?

Q. Yes.

A. Yes.

Q. And during what period of time? From 1960 on?

A. No. Because the 17th floor wasn't in existence in 1960. It only came into existence, you know, in the '80s. It was -- House 17 just refers to -- that was the business that operated out of the 17th floor.

Q. Okay. But -- and that was the business that was --

A. The IA business. It was basically just

split-strike business, because that was -- that did -- I think the 17th floor came into existence after 19 -- in -- after '92.

Q. Right. So isn't -- isn't it a fact that when you -- when you started doing the -- we'll call it, the fraudulent investment advisory business, that you moved the people who did that down to a separate floor?

A. That's correct.

Q. And was your idea to separate them from everyone else, so that there wouldn't be --

A. Well, what happened was when we closed the Avellino & Bienes' accounts in '92, the -- when we -- when -- I decided to take the -- those clients back directly into the account.

So the -- in other words, after I -- I returned the money to Avellino & Bienes' accounts, there was an uproar from those accounts, as well as my father-in-law, because they were all basically -- most of them were -- were his accounting clients, and they -- you know, they all wanted to continue to do business.

The SEC had told me at the time, they said, look, you -- you want to -- you want to still do business with these people. That's fine, because

there's nothing wrong with you doing business with these people.

As a matter of fact, they said, if you want to do business with the Avellino & Bienes' people, that's -- that's fine too. They just have to register as an -- as a registered investment company, you know.

I said, no. I said, I'm -- I was furious with -- with them at the time, because they had never told me that they had changed their mode of operation, where they were now paying them, you know, interest on -- on a loan.

That was not something that was ever agreed upon with me. So I said, I'm -- you know, I decided I'm sending the money back, closing those accounts, but, of course, I started getting, you know, a lot of pressure from these people, who were relying upon that money, you know, to live on, you know.

They said, no. Why -- why can't we open a direct account with you, you know? I said, well, because I'm not really equipped to handle all of these individual accounts, you know. I -- they had like 500 customers, you know, clients, you know.

So I said, look, you know, I don't want to do that. But then it was Frank DiPascali basically who said -- because he was, you know, handling that

stuff at the time. He said to me, look, let's -- you know, let's take these -- these new clients.

And I said, well, you know, it's like, you know -- it's -- who the hell is going to handle all of that stuff? And he was the one that said, well, you know, we'll just computerize the trading, and, you know, I -- I can handle all of that stuff.

So I operated -- I said, all right. You want to start doing that, we'll -- we'll start doing that. And that's when I -- I needed more space and operated and put them on the 17th floor.

Q. Okay. So House 17 was only a term used after 1992?

A. Pretty much. It's -- to my recollection, yes.

Q. Okay.

A. Because it didn't exist, the 17th floor --

Q. Okay.

A. -- before then.

Q. Okay. And is it fair to say that it was only after House 17 was formed, by that is you moved people downstairs, that it was only after that that you first began the investment advisory fraud?

A. Correct.

MR. SHEEHAN: Objection. Go ahead.

BY MS. CHAITMAN:

Q. Let me ask that in a way that Mr. Sheehan won't object.

Was there any investment advisory fraud done by your firm prior to the formation of House 17?

A. No. I mean, I'm not exactly sure how you're using House 17, like in what reference, you know.

Q. Well, the -- when you moved people down to the 17th floor --

A. Uh-huh.

Q. -- it was Frank DiPascali, Jodi Crupi, Annette Bongiorno?

A. Yes. And then the -- the whole -- the mailroom was down there and the -- you know, part of the computer operation was down there. Anything that -- anybody that was going to be related to all of these accounts basically.

Q. Okay. And -- but that was -- that was done sometime in 1992 --

A. Right.

Q. -- or '93?

Well, do you remember when?

A. No. I don't remember. It was like -- I -- you know, I'd have to look at the leases, but basically it was -- it all started basically after

the -- I know it was '92, because that was when the Avellino & Bienes thing blew up.

Q. Okay. Okay.

A. It was the summer of '92, was when the Avellino & Bienes started. So it would have to be sometime after that.

Q. Okay. Now, during the period prior to 1992 was the investment advisory operation handled separately from the market-making and proprietary trading?

A. Yes. Yeah, it always was.

Q. It was always handled separately?

A. (WITNESS NODS HEAD UP AND DOWN.)

Q. But --

MR. SHEEHAN: The witness nodded yes.

THE WITNESS: Huh?

MR. SHEEHAN: You nodded yes.

MR. GOLDMAN: You have to verbalize your answer.

THE WITNESS: Oh.

MR. GOLDMAN: You seemed to indicate while you're nodding your head.

THE WITNESS: Yes.

MR. SHEEHAN: Thank you.

BY MS. CHAITMAN:

Q. During the 1980s who was responsible for the investment advisory accounts, like we just looked at the -- the Blecker statement, June 30th?
A. Me.
Q. You handled that?
A. Right.
Q. Okay. Did you have traders who were in the market-making or proprietary trading groups that actually did the trading for the investment advisory customers in the '80s?
A. No. The only one that handled the -- that spoke to the clients and that made the decision of what to buy and sell for the clients was myself.
Q. Okay.
A. Not -- none of the market-makers. I mean, market-makers might have bought stock into the firm's -- into the firm's inventory, but I was the one that actually made the decision as to put the -- put the trade through to a client account.
Q. Okay. And since you were buying from inventory, you could just look at the inventory and decide what --
A. Yeah.
Q. -- to sell to the --
A. Or if I went out and -- you know, or if it

went -- or if the market-maker bought it from the street into -- into his account, and then I would make the decision --

Q. Okay.

A. -- to put it into a client account.

Q. Okay. If you'd be good enough to look at paragraph 119 of Dubinsky's report.

MR. GOLDMAN: One -- one --

MS. CHAITMAN: It's paragraph 119.

MR. SHEEHAN: Paragraph 119. Okay.

THE WITNESS: Where the hell is paragraph 119?

MS. CHAITMAN: The --

MR. GOLDMAN: Page 51.

THE WITNESS: What page?

MR. GOLDMAN: 51.

THE WITNESS: Okay. Uh-huh.

BY MS. CHAITMAN:

Q. If you could, just read paragraphs 185 through 190. I just want to ask you some questions about --

A. Paragraph one --

Q. 185.

MR. SHEEHAN: Okay. So we're --

MS. CHAITMAN: You know what? Oh,

we're looking at different --
THE WITNESS: I'm not with you.
MS. CHAITMAN: You know what? I've got different versions of the Dubinsky report. Let -- let me do it differently. Hold on one second.
BY MS. CHAITMAN:
Q. Okay. If you'd be good enough to turn to page 35. So Mr. Dubinsky's -- the heading on subparagraph two is that, "Purported convertible security trades exceeded the entire reported market volume for certain days."
A. Uh-huh.
Q. Do you see that heading?
A. Right.
Q. Okay. And then he explains that he looked at reported records on the New York Stock Exchange, the daily stock price record, the --
A. Uh-huh.
Q. -- American Stock Exchange and the daily price record from the New York Stock Exchange; do you see that?
A. Right.
Q. And he reached the conclusion that these had to be fraudulent trades, because there weren't that

many trades done on those days?
A. Right.
Q. And I believe you've already explained, but can you just explain again why this conclusion is not correct?
A. Well, he's -- he's making -- he's referencing in his footnote that the data was collected from the daily stock price record from the New York Stock Exchange, from the daily stock record price and the American Stock Exchange, which provided the month and short position of the data.
These trades were not executed. There's no relevance to looking at the New York Stock Exchange or the American Stock Exchange, because they wouldn't be -- stock would never have been transacted on those -- on those exchanges anyhow.
Q. Okay. And is that a fact that's generally known or -- I mean --
A. Well --
Q. If you --
MR. SHEEHAN: Object to the form.
THE WITNESS: Anybody that knew Madoff's business -- I mean, anybody, including the clients, it would be hard -- I mean, we were relatively famous for, you know, trading off the

floor of the exchanges.
So, I mean, with -- anybody that was a client of ours or that was a regulator or that was in the industry would know that our business was not transacted on the floor of the New York Stock Exchange.
BY MS. CHAITMAN:
Q. Okay. Now, looking at page 36.
A. Uh-huh.
Q. Dubinsky has a chart showing that most of the trades that -- you know, 41 percent, there were no trades occurred in the market that -- that exceeded one to two times the number of trades on the account statements.
Is that again because he's not looking at the right place, he doesn't have the records to show the trades?
MR. SHEEHAN: Object.
THE WITNESS: Yes.
BY MS. CHAITMAN:
Q. Okay. Now, on page 37 Mr. Dubinsky is saying that the transactions reported on the Avellino & Bienes' statements were -- were not possible because of the volume in the market.
Did you make up the trades for the

Avellino & Bienes' clients, or were those actual trades?

A. You talk -- what period of time are you talking about?

Q. Well, the Avellino & Bienes' clients during the 1980s on the convertible --

A. Right.

Q. -- arbitrage, were those actual trades or were those made-up trades?

A. Those were actual trades.

Q. Okay. If you look on page 38.

A. Uh-huh. All right.

Q. Mr. Dubinsky opines that the -- the purchase prices of the convertible securities did not represent market prices?

A. Right.

Q. I think you've spoken to this, but can you just briefly summarize your position on this.

A. He's -- he -- he's -- he's referencing the New York Stock Exchange bonds, and none of these trades would have -- you know, were executed on the New York Stock Exchange.

Q. Okay. Would it be possible for someone to actually check the prices? Are there records that exist or that even existed as of 2008 which would have

shown what the trade prices were on the over-the-counter market in the 1980s?

A. Would there be --

Q. Is there anyplace that one could have looked for that?

A. On a -- if it was a convertible bond?

Q. Yes.

A. Probably not, because -- well, certainly you wouldn't reference the New York Stock Exchange. The trade didn't take place on that. As to -- there were --

It depends upon -- I'm not sure when -- when there was any records kept as to over-the-counter bond transactions. That was always sort of a sketchy area.

There was confusion in the industry whether bonds that trades -- the bonds that were traded over the counter were reported or not reported. The -- I'm not sure about what date that was.

And, then again, it depended upon how they were reported, because if the bonds were done after hours, they wouldn't be reported to any facility.

Sometimes you would have to call up the -- for awhile the NASD put a system in where you would call them up and report them over the phone, you know, after the close of the day, but there was always sort

of confusion about that.

Q. Did the trustee or any attorney working for the trustee ever ask you whether you purchased the convertible bonds --

A. Not to my recollection.

Q. -- through the New York Stock Exchange?

A. No.

Q. Did they ever ask you anything about how you acquired the bonds?

A. I don't think so.

Q. Did they ever talk to you about how the bonds were priced?

A. No.

Q. Now, on page 40 Mr. Dubinsky states at the top of the page that, "Convertible securities were purportedly traded by the IA business even after they were called for conversion."

A. Correct.

Q. Do you have any comment on that conclusion?

A. No, because, you know, I don't -- I don't remember this particular trade. You know, I wouldn't have -- it was so long ago that I wouldn't have record.

And, again, I'm not sure that you -- I'm not sure of whether or not you are able to trade a bond

after the fact that it was converted, called for conversion. I mean, you weren't forced to convert, to my knowledge.

Q. Okay. Well, he only gives one example, and it's McMillan. And he writes in paragraph 100, "The IA business purportedly closed out its position on March 14th, 1985. However, this" -- "the subordinated debentures were converted into 1.6 million shares of common stock in January 1985."

A. He said it was -- it was -- it was -- what? It was converted -- it was --

Q. Look at paragraph 100.

A. Uh-huh. Is he saying they were called or converted?

Q. He's saying that the subordinated debentures were converted.

A. Oh, he's saying called, I think. He said they were -- they were called. Right. He -- he -- what he's pointing out to is these bonds were -- were called, but it was closed out on the customer account in March.

Now, that, to me, looks like that this bond was -- was -- was unwound or swapped, and it may have not been closed out. And the customer -- looking at the customer account, it just says, "Received and

delivered."

It doesn't say converted, which -- which is the way it would always appear, because when we were -- it means that we were unwinding the customer position from -- into the firm's trading account. It was an internalized trade.

So, as far as -- you know, they may have called the bonds, you know, then, but he was -- but he was basically pointing out that we would have had to physically convert it, you know, transfers, if, in fact -- you know, obviously, you couldn't physically convert it after the bond was called, because --

Q. Right.

A. -- they wouldn't do that.

Q. Right.

A. So that -- that points out to me that that was a trade that was unwound internally. That we were just closing out the trade and the customer account transaction.

Q. Okay.

A. It wasn't a bond that was issued to me. You know, it wasn't -- wasn't turned into the company itself.

Q. Okay.

A. Like a conversion.

Q. Okay. In the heading above paragraph 101, he wrote, "The IA business did not account for dividend payments or accrued interest on the convertible securities."

A. Uh-huh.

Q. "Thereby evidencing the fictitious" -- "fictitious nature of the underlying transactions."

A. It depends upon whether the bond -- you know, there are instances where a bond is -- is bought, you know, what they call traded flat. It means traded without -- without interest.

It's like that with dividends also. You can trade a stock flat X dividend. You buy it at a lower price, because you're buying it without the dividend.

It's -- it's a transaction that you would -- you know, typically it would be done between dealers and professionals, not for the average customer, because these -- these instruments are bought to trade.

They're not interested -- they're not bought as an investment purpose to be held, which is the way -- you know, which is -- if you were doing that as typically an investment type of account, then, obviously, you would want to, you know, get the dividend for income and so on and so forth.

But professionals will trade what they call flat -- or just like you could buy a zero coupon bond. Most customers don't buy zero coupon bonds, but -- but dealers, traders, like ourselves, typically will trade, you know -- you know, zero coupon bonds are flat, because what you're really doing is you're not --

The idea of the trade is not to cash the dividend or the interest, but basically to use the instrument as a trading vehicle, but you -- when you do that, obviously, you account for the dividend in the price of the stock.

So you're -- you adjust the price of the stock to the client based upon the fact that you're not getting a dividend.

Q. So --

A. And, also, one of the things Dubinsky doesn't seem to account for is that brokerage firms trade what they call due bills.

In other words, most -- when you buy stock frequently, you're not getting the -- the dividend from the company, because you're buying the stock -- it's coming -- it's being transacted in what's known as street name, which is -- it's not in -- registered in -- in the client's name and so on.

So you -- a lot of times -- very frequently you'll buy stock from a customer that pays a dividend or declared a dividend, and you won't get the dividend. The company is going to pay the dividend to whoever the stock's name is registered in.

And most stocks are not registered in clients' names anymore. They're -- they're registered in a street name. So the brokerage firms will issue due bills to each other to get the monies, and then you just journal it into a client account.

He doesn't go into any of that, which is -- I can understand, you know. I'm not faulting him for that. It's not that the customer didn't -- didn't get the price.

So our customer -- if they weren't getting the dividend, they were -- they were getting a lower price on the stock, you know, to account for that, because the firm is going to get the dividend.

So you have to make the customer whole some way. When you're internalizing trades as principal, that's a common way of doing business.

Q. Did Mr. Dubinsky ever talk to you?

A. No. I never knew he existed until I saw the report.

Q. Okay. Did anyone from the trustee's side,

any expert, ever question you about any of the --
A. To my recollection --
Q. Let me just finish the question.
-- any of the convertible arbitrage trade?
A. No. I never had any conversation with the trustees regarding any of this trading, other than when they came down here to speak to me, but I don't think they ever really got into -- into the trading.
Q. Okay. Mr. Dubinsky reaches the conclusion on page 41, just above paragraph 105, that there's no evidence that the IA business converted the convertible securities into common shares; do you see that?
A. Yeah.
Q. And then he says, "Companies that have publicly-traded securities typically use third-party institutions, known as transfer agents, to keep track of the individuals and entities that own their stocks and bonds."
"Most transfer agents are banks or trust companies. Although, companies sometimes act as its own transfer agent. The transfer agent maintains records of the shareholder information."
And then in paragraph 109, he says, "In order to have converted preferred convertible stock

and convertible debt into common stock, the IA business would have needed documentation regarding the conversion of the securities."

A. Uh-huh.

Q. Now, did you have that documentation, or did you --

A. No. As I stated earlier, if -- if we converted -- when we converted stock, we typically would have one of our clearing facilities convert the stock.

Meaning, Commercial Bank of North America, Bankers Trust, Irving, any one of those people. Marine Midland that -- that provided that facility for us.

So we would not, except under rare occasions, physically convert the stock ourselves. Doesn't mean the stock wasn't converted.

Q. Okay.

A. And, as far as him relating to the transfer agents, the stock trades in street name. So -- meaning it's -- it's traded as a negotiable instrument. It's not -- it's very rarely put in a customer's name, unless the customer is going to request delivery of the securities.

So if a customer wants to hold the

securities themselves, which now doesn't exist -- as a matter of fact, they're eventually going to -- that's never going to happen, because nobody wants to go through transfer agents.

So I don't even know why that's in the report, because very few brokerage firms put stock in a customer's name. Customers don't want to hold it.

If the brokerage firm is holding their security, they always -- they never hold it in a customer's name. They hold it in -- in the street name. And the dividends don't -- do not go to the customer directly from the -- from the company --

Q. Right.

A. -- transfers. They get paid to the broker, and then the broker would make the customer whole.

Q. And that would have been true for the 1980s?

A. Yes.

Q. Okay. Now, in paragraph 115 Dubinsky wrote, "Trade confirmations fabricated by the IA business to support the convertible arbitrage trades were actually prepared backwards, as though BLMIS was trading as a principal, rather than an agent."

A. Oh, that's true. I mean, we always trade as principal, as I said before. Doesn't mean they were created backwards.

Q. Right.

A. I mean, it says right on the customer confirmation that we're trading as principal.

Q. Right.

A. And that's not -- that has nothing to do with whether you're trading it backwards or not.

Q. Right.

A. He's almost insinuating that -- from that statement that trading as a principal, there was something wrong with it. That would be great news to the industry.

Q. I want to just interject some questions on another subject. Can you describe for us what kinds of trading you did with Bear Stearns?

A. Mostly market-making, proprietary trading or for Bear Stearns' customers. There's -- our trades with Bear Stearns were typical of what we traded with everybody.

It was -- we were trading basically for Bear Stearns' own account or for their customers' accounts. If Bear Stearns got -- wanted to buy and sell stock for -- for one of their clients, they had to go to a market-maker, like myself, unless Bear Stearns traded the stock himself. Then he would internalize the stock himself, just as I'm doing.

Q. Okay. So Bear -- but Bear Stearns was a market-maker; right?
A. Some -- in some of the securities. Yeah.
Q. Okay. And they were doing convertible bond trades in the 1980s?
A. Yes.
Q. Okay. So why would they need you?
A. Well, because they may have not been making a market in the convertible bond that we were making the market in. In other words, they -- you know, there are times when we were a market-maker in a convertible bond, and we bought it from somebody else as well.
If -- if we didn't -- if we didn't have the stock in inventory, and we didn't want to short it to a client, we might go to Bear Stearns, and they might do the same thing to us.
But Bear Stearns was a competitor at times, and they were not a competitor, you know, at times. But Bear Stearns was -- was one of our big clients.
Q. Did they buy securities for you and hold -- and hold those securities?
A. Did Bear Stearns? We had accounts at Bear Stearns. Yes.
Q. So there would have been times when you

purchased securities through them, and they would hold those securities?

A. Bear Stearns?

Q. Yeah.

A. Probably not. You know, usually they would, you know -- it depends upon what -- what kind of stock it was and whether it was a stock that went through the clearinghouse or not.

Q. Or convertible bonds, would they sometimes be holding some of your inventory?

A. No. They wouldn't typically be holding convertible bonds for us.

Q. Would you be holding convertible bonds for them?

A. Probably not.

Q. Okay. I'd -- I'd like to look at pages 48 and 49 of the report.

A. Uh-huh.

Q. This is -- in paragraph 117, if you can just read it to yourself, and then I'll ask you some questions.

A. This -- this was an example that I pointed to earlier where he fails to understand he's reading the confirmations wrong. He's reversing -- he's confusing the we -- we to -- to you.

Q. Okay. Okay. And he's -- he's concluding that this is -- this is evidence of your fraud; right?

A. Yeah. He's -- right. I mean, it's -- clearly he's -- he's not understanding that when we say, "We bought," it's we bought from the customer or we sold to the customer.

Not as he's -- so he's saying that if we -- if we wrote the confirmation wrong, the trade never could have taken place, because he's -- he's not reading it properly.

Q. Right. Can you describe for us the kinds of transactions you did for Carl Shapiro's various accounts that you felt uncomfortable about doing?

MR. SHEEHAN: Object.

THE WITNESS: Okay. Well, I -- it would be easier for me to explain the strategies that I initiated for the big four accounts, which Carl Shapiro would be included in that.

The -- we have to go back to -- this is going to take a little bit of time. How much time do we have?

MR. SHEEHAN: The rest of the afternoon.

THE WITNESS: Oh, okay. That's fine with me. Unfortunately, I have nowhere to go.

C E R T I F I C A T E

I, BERNARD L. MADOFF, do hereby certify that I have read and understand the foregoing transcript and believe it to be a true, accurate and complete transcript of my testimony, subject to the attached list of changes, if any.

____

BERNARD L. MADOFF

This deposition was signed in my presence by ____________________________, on the _________ day of _________________________, 2017.

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Notary Public

My commission expires: _________________

E R R A T A   S H E E T

RE: SIPC VS. MADOFF

DEPOSITION OF: BERNARD L. MADOFF

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CERTIFICATE OF TRANSCRIPT

I, Lisa A. DeGroat, a Court Reporter and Notary Public in and for the aforesaid county and state, do hereby certify that the foregoing deposition of BERNARD L. MADOFF, was taken by me and reduced to typewriting under my direction; and the transcript is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by any attorney or counsel employed by the parties hereto or financially interested in the action.

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LISA A. DeGROAT
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